Republic of the Philippines
SUPREME COURT
Manila

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G.R. No. L-48930 February 23, 1944

ANTONIO VAZQUEZ, petitioner,
vs.
FRANCISCO DE BORJA, respondent.

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G.R. No. L-48931 February 23, 1944

FRANCISCO DE BORJA, petitioner,
vs.
ANTONIO VAZQUEZ, respondent.

OZAETA, *J.*:

This action was commenced in the Court of First Instance of Manila by Francisco de Borja against Antonio Vazquez and Fernando Busuego to recover from them jointly and severally the total sum of P4,702.70 upon three alleged causes of action, to wit: First, that in or about the month of January, 1932, the defendants jointly and severally obligated themselves to sell to the plaintiff 4,000 cavans of palay at P2.10 per cavan, to be delivered during the month of February, 1932, the said defendants having subsequently received from the plaintiff in virtue of said agreement the sum of P8,400; that the defendants delivered to the plaintiff during the months of February, March, and April, 1932, only 2,488 cavans of palay of the value of P5,224.80 and refused to deliver the balance of 1,512 cavans of the value of P3,175.20 notwithstanding repeated demands. Second, that because of defendants' refusal to deliver to the plaintiff the said 1,512 cavans of palay within the period above mentioned, the plaintiff suffered damages in the sum of P1,000. And, third, that on account of the agreement above mentioned the plaintiff delivered to the defendants 4,000 empty sacks, of which they returned to the plaintiff only 2,490 and refused to deliver to the plaintiff the balance of 1,510 sacks or to pay their value amounting to P377.50; and that on account of such refusal the plaintiff suffered damages in the sum of P150.

The defendant Antonio Vazquez answered the complaint, denying having entered into the contract mentioned in the first cause of action in his own individual and personal capacity, either solely or together with his codefendant Fernando Busuego, and alleging that the agreement for the purchase of 4,000 cavans of palay and the payment of the price of P8,400 were made by the plaintiff with and to the Natividad-Vasquez Sabani Development Co., Inc., a corporation organized and existing under the laws of the Philippines, of which the defendant Antonio Vazquez was the acting manager at the time the transaction took place. By way of counterclaim, the said defendant alleged that he suffered damages in the sum of P1,000 on account of the filing of this action against him by the plaintiff with full knowledge that the said defendant had nothing to do whatever with any and all of the transactions mentioned in the complaint in his own individual and personal capacity.

The trial court rendered judgment ordering the defendant Antonio Vazquez to pay to the plaintiff the sum of P3,175.20 plus the sum of P377.50, with legal interest on both sums, and absolving the defendant Fernando Busuego (treasurer of the corporation) from the complaint and the plaintiff from the defendant Antonio Vazquez' counterclaim. Upon appeal to the Court of Appeals, the latter modified that judgment by reducing it to the total sum of P3,314.78, with legal interest thereon and the costs. But by a subsequent resolution upon the defendant's motion for reconsideration, the Court of Appeals set aside its judgment and ordered that the case be remanded to the court of origin for further proceedings. The defendant Vazquez, not being agreeable to that result, filed the present petition for certiorari (G.R. No. 48930) to review and reverse the judgment of the Court of Appeals; and the plaintiff Francisco de Borja, excepting to the resolution of the Court of Appeals whereby its original judgment was set aside and the case was ordered remanded to the court of origin for further proceedings, filed a cross-petition for certiorari (G.R. No. 48931) to maintain the original judgment of the Court of Appeals.

The original decision of the Court of Appeals and its subsequent resolutions on reconsideration read as follows:

Es hecho no controvertido que el 25 de Febrero de 1932, el demandado-apelante vendio al demandante 4,000 cavanes de palay al precio de P2.10 el cavan, de los cuales, dicho demandante solamente recibio 2,583 cavanes; y que asimismo recibio para su envase 4,000 sacos vacios. Esta provbado que de dichos 4,000 sacos vacios solamente se entregaron, 2,583 quedando en poder del demandado el resto, y cuyo valor es el de P0.24 cada uno. Presentada la demanda contra los demandados Antonio Vazquez y Fernando Busuego para el pago de la cantidad de P4,702.70, con sus intereses legales desde el 1.o de marzo de 1932 hasta su completo pago y las costas, el Juzgado de Primera Instancia de Manila el asunto condenando a Antonio Vazquez a pagar al demandante la cantidad de P3,175.20, mas la cantidad de P377.50, con sus intereses legales, absolviendo al demandado Fernando Busuego de la demanda y al demandante de la reconvencion de los demandados, sin especial pronunciamiento en cuanto a las costas. De dicha decision apelo el demandado Antonio Vazquez, apuntado como principal error el de que el habia sido condenado personalmente, y no la corporacion por el representada.

Segun la preponderancia de las pruebas, la venta hecha por Antonio Vazquez a favor de Francisco de Borja de los 4,000 cavanes de palay fue en su capacidad de Presidente interino y Manager de la corporacion Natividad-Vazquez Sabani Development Co., Inc. Asi resulta del Exh. 1, que es la copia al carbon del recibo otorgado por el demandado Vazquez, y cuyo original lo habia perdido el demandante, segun el. Asi tambien consta en los libros de la corporacion arriba mencionada, puesto que en los mismos se ha asentado tanto la entrada de los P8,400, precio del palay, como su envio al gobierno en pago de los alquileres de la Hacienda Sabani. Asi mismo lo admitio Francisco de Borja al abogado Sr. Jacinto Tomacruz, posterior presidente de la corporacion sucesora en el arrendamiento de la Sabani Estate, cuando el solicito sus buenos oficios para el cobro del precio del palay no entregado. Asi igualmente lo declaro el que hizo entrega de parte del palay a Borja, Felipe Veneracion, cuyo testimonio no ha sido refutado. Y asi se deduce de la misma demanda, cuando se incluyo en ella a Fernando Busuego, tesorero de la Natividad-Vazquez Sabani Development Co., Inc.

Siendo esto asi, la principal responsable debe ser la Natividad-Vazquez Sabani Development Co., Inc., que quedo insolvente y dejo de existir. El Juez sentenciador declaro, sin embargo, al demandado Vazquez responsable del pago de la cantidad reclamada por su negligencia al vender los referidos 4,000 cavanes de palay sin averiguar antes si o no dicha cantidad existia en las bodegas de la corporacion.

Resulta del Exh. 8 que despues de la venta de los 4,000 cavanes de palay a Francisco de Borja, el mismo demandado vendio a Kwong Ah Phoy 1,500 cavanes al precio de P2.00 el cavan, y decimos 'despues' porque esta ultima venta aparece asentada despues de la primera. Segun esto, el apelante no solamente obro con negligencia, sino interviniendo culpa de su parte, por lo que de acuerdo con los arts. 1102, 1103 y 1902 del Codigo Civil, el debe ser responsable subsidiariamente del pago de la cantidad objecto de la demanda.

En meritos de todo lo expuesto, se confirma la decision apelada con la modificacion de que el apelante debe pagar al apelado la suma de P2,295.70 como valor de los 1,417 cavanes de palay que dejo de entregar al demandante, mas la suma de P339.08 como importe de los 1,417 sacos vacios, que dejo de devolver, a razon de P0.24 el saco, total P3,314.78, con sus intereses legales desde la interposicion de la demanda y las costas de ambas instancias.

Vista la mocion de reconsideracion de nuestra decision de fecha 13 de Octubre de 1942, y alegandose en la misma que cuando el apelante vendio los 1,500 cavanes de palay a Ah Phoy, la corporacion todavia tenia bastante existencia de dicho grano, y no estando dicho extremo suficientemente discutido y probado, y pudiendo variar el resultado del asunto, dejamos sin efecto nuestra citada decision, y ordenamos la devolucion de la causa al Juzgado de origen para que reciba pruebas al efecto y dicte despues la decision correspondiente.

Upon consideration of the motion of the attorney for the plaintiff-appellee in case CA-G.R. No. 8676, *Francisco de Borja vs. Antonio Vasquez et al.*, praying, for the reasons therein given, that the resolution of December 22, 1942, be reconsidered: Considering that said resolution remanding the case to the lower court is for the benefit of the plaintiff-appellee to afford him opportunity to refute the contention of the defendant-appellant Antonio Vazquez, motion denied.

The action is on a contract, and the only issue pleaded and tried is whether the plaintiff entered into the contract with the defendant Antonio Vazquez in his personal capacity or as manager of the Natividad-Vazquez Sabani Development Co., Inc. The Court of Appeals found that according to the preponderance of the evidence "the sale made by Antonio Vazquez in favor of Francisco de Borja of 4,000 cavans of palay was in his capacity as acting president and manager of the corporation Natividad-Vazquez Sabani Development Co., Inc." That finding of fact is final and, it resolving the only issue involved, should be determinative of the result.

The Court of Appeals doubly erred in ordering that the cause be remanded to the court of origin for further trial to determine whether the corporation had sufficient stock of palay at the time appellant sold, 1500 cavans of palay to Kwong Ah Phoy. First, if that point was material to the issue, it should have been proven during the trial; and the

statement of the court that it had not been sufficiently discussed and proven was no justification for ordering a new trial, which, by the way, neither party had solicited but against which, on the contrary, both parties now vehemently protest. Second, the point is, in any event, beside the issue, and this we shall now discuss in connection with the original judgment of the Court of Appeals which the plaintiff cross-petitioner seeks to maintain.

The action being on a contract, and it appearing from the preponderance of the evidence that the party liable on the contract is the Natividad-Vazquez Sabani Development Co., Inc. which is not a party herein, the complaint should have been dismissed. Counsel for the plaintiff, in his brief as respondent, argues that altho by the preponderance of the evidence the trial court and the Court of Appeals found that Vazquez celebrated the contract in his capacity as acting president of the corporation and altho it was the latter, thru Vazquez, with which the plaintiff had contracted and which, thru Vazquez, had received the sum of P8,400 from Borja, and altho that was true from the point of view of a legal fiction, "ello no impede que tambien sea verdad lo alegado en la demanda de que la misma persona de Vasquez fue la que contrato con Borja y que la misma persona de Vasquez fue quien recibio la suma de P8,400." But such argument is invalid and insufficient to show that the president of the corporation is personally liable on the contract duly and lawfully entered into by him in its behalf.

It is well known that a corporation is an artificial being invested by law with a personality of its own, separate and distinct from that of its stockholders and from that of its officers who manage and run its affairs. The mere fact that its personality is owing to a legal fiction and that it necessarily has to act thru its agents, does not make the latter personally liable on a contract duly entered into, or for an act lawfully performed, by them for an in its behalf. The legal fiction by which the personality of a corporation is created is a practical reality and necessity. Without it no corporate entities may exists and no corporate business may be transacted. Such legal fiction may be disregarded only when an attempt is made to use it as a cloak to hide an unlawful or fraudulent purpose. No such thing has been alleged or proven in this case. It has not been alleged nor even intimated that Vazquez personally benefited by the contract of sale in question and that he is merely invoking the legal fiction to avoid personal liability. Neither is it contended that he entered into said contract for the corporation in bad faith and with intent to defraud the plaintiff. We find no legal and factual basis upon which to hold him liable on the contract either principally or subsidiarily.

The trial court found him guilty of negligence in the performance of the contract and held him personally liable on that account. On the other hand, the Court of Appeals found that he "no solamente obro con negligencia, sino interveniendo culpa de su parte, por lo que de acuerdo con los arts. 1102, 1103 y 1902 del Codigo Civil, el debe ser responsable subsidiariamente del pago de la cantidad objeto de la demanda." We think both the trial court and the Court of Appeals erred in law in so holding. They have manifestly failed to distinguish a contractual from an extracontractual obligation, or an obligation arising from contract from an obligation arising from *culpa aquiliana*. The fault and negligence referred to in articles 1101-1104 of the Civil Code are those incidental to the fulfillment or nonfullfillment of a contractual obligation; while the fault or negligence referred to in article 1902 is the *culpa aquiliana* of the civil law, homologous but not identical to tort of the common law, which gives rise to an obligation independently of any contract. (Cf. Manila R.R. Co. *vs.* Cia. Trasatlantica, 38 Phil., 875, 887-890; Cangco *vs.* Manila R.R. Co., 38 Phil. 768.) The fact that the corporation, acting thru Vazquez as its manager, was guilty of negligence in the fulfillment of the contract, did not make Vazquez principally or even subsidiarily liable for such negligence. Since it was the corporation's contract, its nonfulfillment, whether due to negligence or fault or to any other cause, made the corporation and not its agent liable.

On the other hand if independently of the contract Vazquez by his fault or negligence cause damaged to the plaintiff, he would be liable to the latter under article 1902 of the Civil Code. But then the plaintiff's cause of action should be based on *culpa aquiliana* and not on the contract alleged in his complaint herein; and Vazquez' liability would be principal and not merely subsidiary, as the Court of Appeals has erroneously held. No such cause of action was alleged in the complaint or tried by express or implied consent of the parties by virtue of section 4 of Rule 17. Hence the trial court had no jurisdiction over the issue and could not adjudicate upon it (Reyes *vs.* Diaz, G.R. No. 48754.) Consequently it was error for the Court of Appeals to remand the case to the trial court to try and decide such issue.

It only remains for us to consider petitioner's second assignment of error referring to the lower courts' refusal to entertain his counterclaim for damages against the respondent Borja arising from the bringing of this action. The lower courts having sustained plaintiff's action. The finding of the Court of Appeals that according to the preponderance of the evidence the defendant Vazquez celebrated the contract not in his personal capacity but as acting president and manager of the corporation, does not warrant his contention that the suit against him is malicious and tortious; and since we have to decide defendant's counterclaim upon the facts found by the Court of Appeals, we find no sufficient basis upon which to sustain said counterclaim. Indeed, we feel that a a matter of moral justice we ought to state here that the indignant attitude adopted by the defendant towards the plaintiff for having brought this action against him is in our estimation not wholly right. Altho from the legal point of view he was not personally liable for the fulfillment of the contract entered into by him on behalf of the corporation of which he was the acting president and manager, we think it was his moral duty towards the party with whom he contracted in said capacity to see to it that the corporation represented by him fulfilled the contract by delivering the palay it had sold, the price of which it had already received. Recreant to such duty as a moral person, he has

no legitimate cause for indignation. We feel that under the circumstances he not only has no cause of action against the plaintiff for damages but is not even entitled to costs.

The judgment of the Court of Appeals is reversed, and the complaint is hereby dismissed, without any finding as to costs.

Yulo, C.J., Moran, Horrilleno and Bocobo, JJ., concur.

Separate Opinions

PARAS, *J.,* dissenting:

Upon the facts of this case as expressly or impliedly admitted in the majority opinion, the plaintiff is entitled to a judgment against the defendant. The latter, as acting president and manager of Natividad-Vazquez Sabani Development Co., Inc., and with full knowledge of the then insolvent status of his company, agreed to sell to the plaintiff 4,000 cavans of palay. Notwithstanding the receipt from the plaintiff of the full purchase price, the defendant delivered only 2,488 cavans and failed and refused to deliver the remaining 1,512 cavans and failed and refused to deliver the remaining 1,512 cavans and a quantity of empty sacks, or their value. Such failure resulted, according to the Court of First Instance of Manila and the Court of Appeals, from his fault or negligence.

It is true that the cause of action made out by the complaint is technically based on a contract between the plaintiff and Natividad-Vazquez Sabani Development Co., Inc. which is not a party to this case. Nevertheless, inasmuch as it was proven at the trial that the defendant was guilty of fault in that he prevented the performance of the plaintiff's contract and also of negligence bordering on fraud which cause damage to the plaintiff, the error of procedure should not be a hindrance to the rendition of a decision in accordance with the evidence actually introduced by the parties, especially when in such a situation we may order the necessary amendment of the pleadings, or even consider them correspondingly amended.

As already stated, the corporation of which the defendant was acting president and manager was, at the time he made the sale of the plaintiff, known to him to be insolvent. As a matter of fact, said corporation was soon thereafter dissolved. There is admitted damage on the part of the plaintiff, proven to have been inflicted by reason of the fault or negligence of the defendant. In the interest of simple justice and to avoid multiplicity of suits I am therefore impelled to consider the present action as one based on fault or negligence and to sentence the defendant accordingly. Otherwise, he would be allowed to profit by his own wrong under the protective cover of the corporate existence of the company he represented. It cannot be pretended that any advantage under the sale inured to the benefit of Natividad-Vazquez Sabani Development Co., Inc. and not of the defendant personally, since the latter undoubtedly owned a considerable part of its capital.

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